

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DELIA M. HAYES,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, et al.,

Defendants.

No. 1:20-cv-01233-NONE-EPG

ORDER DENYING PLAINTIFF'S EX PARTE
APPLICATION WITHOUT PREJUDICE

(ECF No. 31)

ORDER STAYING CASE FOR THIRTY
DAYS

On February 2, 2021, Plaintiff Delia M. Hayes ("Plaintiff"), proceeding *pro se* in this action, filed a document entitled "Exparte Request for 90-Day Continuance and Order for Plaintiffs Leave to File Second Amended Complaint." (ECF No. 31). The request, which the Court will construe as a motion for leave to file a second amended complaint, seeks leave to file an amended complaint in 90 days while Plaintiff finds counsel.

Previously, the Court issued findings and recommendations, recommending that Plaintiff's first amended complaint be dismissed, with leave to amend only certain claims. (ECF No. 25). Plaintiff filed a motion for leave to amend on January 15, 2021, (ECF No. 26), which Defendants opposed, (ECF No. 27), and the Court denied for non-compliance with Eastern District of California Local Rule 137(c), (ECF No. 28). Plaintiff then filed objections to the Court's findings and recommendations on January 26, 2021, (ECF No. 29), which Defendants responded to on February 2, 2021, (ECF No. 30).

As the Court informed Plaintiff last time she filed a motion for leave to amend, (ECF No. 28 at 2), Plaintiff must attach a proposed amended complaint to any such motion under this district's local rules. *See* E.D. Cal. L.R. 137(c). Again, Plaintiff did not file a proposed amended complaint. Therefore, the Court will deny her motion for leave to amend.

However, the Court understands that Plaintiff wishes to seek the assistance of counsel. Therefore, the Court will give Plaintiff an opportunity to file an amended complaint, but only if she is able to obtain counsel.

The Court thus denies Plaintiff's motion without prejudice. Plaintiff may re-file a motion for leave to amend within thirty days if (1) the motion complies with Local Rule 137(c) and (2) Plaintiff is represented by counsel. If that occurs, the Court will evaluate Plaintiff's motion under the relevant legal standards. The Court may choose to vacate its findings and recommendations and grant leave to amend.

However, if Plaintiff does not file such a motion in thirty days, the District Judge will proceed to rule on the pending motion to dismiss, with consideration of the undersigned's findings and recommendations and any objections filed to them.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for leave to file a second amended complaint (ECF No. 31) is DENIED, WITHOUT PREJUDICE;
2. This case is STAYED for thirty days; and
3. Within the next thirty days, Plaintiff may re-file a motion for leave to amend, in compliance with Local Rule 137(c), if Plaintiff obtains counsel.

IT IS SO ORDERED.

Dated: **February 3, 2021**

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE